

AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 2009, by and between the Shelby County, Tennessee, a political subdivision of the State of Tennessee ("County") and the City of Memphis, Tennessee, a Municipal Corporation of the State of Tennessee ("City") by and through its Fire Services Division.

RECITALS:

WHEREAS, County of Shelby, owns 0.919 acres of property with improvements that include Fire Station #65 located at 2870 Rockcreek Parkway on the east side of Rockcreek Parkway, south of Stage Road also identified as parcel 096-100-00097 (Leased Premises) Exhibit "A".

WHEREAS, The City will operate Fire Station #65 through its Fire Services Division for the purpose of providing for fire protection services and assistance in firefighting in the areas described herein; and

WHEREAS, The County is agreeable to lease to the City said Fire Station #65 for the purpose of providing for fire protection services and assistance in firefighting, under the terms, covenants, conditions and provisions herein set forth.

NOW, THEREFORE, for and in consideration of the above stated purpose, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Description of the Property.** That 0.919 acres of County owned real property and an improvement which comprises the leased premises subject to this Lease Agreement is more particularly described by metes and bounds in **Exhibit "B"** attached hereto and incorporated herein by reference.

2. **Permitted Use.** The City by and through its Fire Services Division shall use the leased premises for the purpose of providing for fire protection services and assistance in firefighting. The foregoing use is hereinafter referred to as the "Permitted Use". **County** may terminate this Lease on thirty (30) days written notice if the leased premises are used for some use other than the Permitted Use. The leased premises shall not be used for any purpose in violation of any federal, state or municipal statute or ordinance, or any regulation, order or directive of a governmental agency, as such statutes, ordinances, regulations, orders or directives now exist or may hereafter provide, concerning the use and/or safety of the leased premises.

CITY covenants and agrees to use and occupy the leased premises in a careful, safe and proper manner; not to commit or permit to be committed any waste on the leased premises whatsoever; not to create or allow any nuisance to exist on the leased premises, and to abate any nuisance that may arise promptly and free of expense to **COUNTY**.

3. **Term.** COUNTY does hereby lease unto CITY the leased premises for an initial term of ten (10) years commencing from the date of the Lease upon the mutual written consent of all parties to the Agreement. This Lease Agreement between COUNTY and CITY shall hereby terminate June 30, 2016.

4. **Rental.** COUNTY agrees to lease Fire Station #65 to the CITY with no lease fees or charges.

5. **Consideration.** All charges for gas, water, sewer, electricity, light, heat, power, telephone, and other utilities and services used, rendered or supplied to or in connection with the leased premises which are required to be paid by CITY. CITY agrees that COUNTY is not, nor shall it be required, to furnish the CITY or any other occupant, any gas, water, sewer, electricity, light, heat, power, or any other facilities, equipment, labor, materials, or services of any kind. COUNTY will extend any rights it may have to CITY, and will cooperate with CITY, at CITY'S expense, in connection with obtaining the use of any such utilities and other facilities and services.

6. **Renewal Terms.** CITY shall have the option to renew this Lease for one (1) successive term of ten (10) years each upon written mutual agreement of all parties to this Agreement, subject to the following terms and conditions:

(a) CITY shall give to COUNTY and COUNTY shall receive a written notice of the exercise of the option to renew the Lease for the additional term, time being of the essence. The written notice of the option to renew the Lease shall be received by COUNTY not less than 120 days and not greater than 180 days prior to the date the (respective) renewal term shall commence, if exercised. If the notification of the exercise of the (respective) renewal term is not so given and received, the option to renew shall automatically expire, however upon acceptance of a lease payment during any Renewal Term the Lease shall not be cancelable for improper or nonconforming notification.

(b) There shall be no default existing or continuing in the performance of any of the terms of the Lease either at the time written notification to renew is received by COUNTY or on the date the (respective) renewal term is to commence.

7. **Improvements.** All improvements to the leased premises shall be made at CITY'S sole expense. All improvements, including, but not limited to, grading, paving, utility infrastructure, buildings and fixtures paid for in whole or in part by CITY during the term of this Lease, shall become the property of COUNTY upon the expiration of this Lease.

8. **Land Use Permitting.** CITY, at its own expense, shall apply for and secure any and all zoning changes and/or land use permits required to develop and utilize the leased premises for the Permitted Use.

9. **Default and Termination.** COUNTY may terminate this Lease Agreement if CITY fails to perform any other obligation created by this Lease Agreement and fails or refuses for sixty (60) days after notice of default has been given to CITY to take all steps necessary to cure and rectify such default to the reasonable satisfaction of COUNTY; provided, however, that to the extent a default is not reasonably susceptible of being cured within such sixty (60) day period, such cure period shall be extended for as long as necessary to complete such cure, but not to exceed an additional one hundred twenty (120) days for a total cure period of one hundred eighty (180) days, so long as CITY has commenced to cure during such sixty (60) day period and is diligently pursuing such cure to completion.

COUNTY shall have the option of terminating this Lease Agreement immediately upon written notice to CITY due to (i) the insolvency of CITY or the execution of an assignment for the benefit of creditors, (ii) the filing by CITY for reorganization under any law relating to bankruptcy or insolvency, which is not dismissed within sixty (60) days from the date of filing, (iii) the appointment of a receiver or trustee to take possession of substantially all of CITY'S assets located upon the leased premises, (iv) any representation or warranty of CITY contained in this Lease Agreement shall be knowingly false or misleading in any material respect as of the date made or deemed to have been made, or (v) the cessation of operational activities by CITY, including but not limited to, vacating or abandoning the leased premises for a period of ten (10) consecutive days or more. Any and all other notices of default except as provided herein are waived by CITY.

10. **Site Inspections.** COUNTY shall have the right, through its authorized employees or agents, to inspect the leased premises from time to time to determine if it is being utilized and maintained in accordance with this Lease Agreement. Upon reasonable notice to CITY, COUNTY will be allowed ready entry and access to all improvements, premises and areas of the leased premises in order to conduct such inspections. The cost of any such inspections shall be COUNTY'S.

11. **Delivery at End of Lease.** CITY agrees to deliver up said premises to COUNTY at the expiration of this lease in a condition equal to or better than that which exists at the commencement of this lease.

12. **Insurance.** CITY will maintain the following minimum insurance coverage and furnish written evidence of such insurance to COUNTY:

(a) Commercial General Liability coverage for operation of the Premises in accordance with the use clause Section 2, with limits of a minimum of \$1,000,000 single limit per occurrence/\$2,000,000 annual aggregate premises/operations coverage; \$2,000,000 Products/Completed Operations Aggregate; \$2,000,000 Personal and Advertising Injury; \$100,000 Fire Damage (any one fire); \$5,000 per person medical payments. Coverage is to be included for

invitees and visitors. Shelby County, its elected officials, appointees, agents and employees will be included as additional insured.

(b) Business Automobile Liability - minimum limit of \$1,000,000 for any one accident or loss on all owned, hired and non-owned autos.

(c) Worker's Compensation and Employers Liability Coverage as required by Tennessee statutes.

(d) Excess or Umbrella Liability in a limit of no less than \$2,000,000 each occurrence/\$2,000,000 aggregate.

(e) **CITY** will maintain all risk property insurance on any buildings, improvements and fixtures within the leased premises for their full replacement value. **CITY** will maintain all risk property insurance on its business personal property and improvements and betterments thereto. **CITY** will be responsible for paying its deductible, if applicable.

CITY will require all permitted sub-City's, contractors (construction or otherwise) or vendors it engages, to carry and maintain during the term of their said engagement the insurance specified in subparagraphs A, B and D above, and where relevant the insurance coverage specified in subparagraph C above. The policies shall provide for a thirty (30) day notice of cancellation to **COUNTY** and replacement policies shall be delivered at least thirty (30) days prior to the expiration of current policies.

13. Indemnity. **CITY** shall be in exclusive control and possession of the leased premises. **COUNTY** shall not be liable for any loss, injury, death, or damage whatsoever to any persons or property that at any time may be suffered or sustained by **CITY** or by any person whosoever may at any time be using or occupying or visiting the leased premises or be in, on, or about the leased premises. **CITY** shall to the extent permitted by law indemnify, hold harmless and defend **COUNTY**, its agents, employees and elected officials (with counsel approved by and acceptable to **COUNTY**) against any and all claims, liability, loss, or damage whatsoever on account of any such loss, injury, death, or damage. **CITY** waives all claims against **COUNTY** for all such loss, injury, death and damage. **CITY** shall indemnify, hold harmless and defend **COUNTY** for clean-up of hazardous waste or damages or injury of property not caused by **COUNTY**. **CITY** waives all claims against **COUNTY** for damages to improvements that are now on or hereafter placed or built on the leased premises or about the leased premises and to the property of **CITY** in, on, or about the premises, for injuries to persons or property in or about the leased premises, from any cause arising at any time. The provisions in this Lease permitting **COUNTY** to enter and inspect the Leased Premises shall not in any way limit, reduce or restrict **CITY'S** obligations under this Section.

COUNTY shall have no obligation for the payment of any judgments or the settlement of any claims against **CITY** or its subcontractors, agents or employees as a result of or relating to **CITY'S** obligations under this Agreement.

CITY shall immediately notify **COUNTY**, c/o Shelby County Finance, Suite 1150, 160 N. Main Street, Memphis, Tennessee 38103 and Contracts Administration, Shelby County Government, 160

North Main, Suite 550, Memphis, TN 38103, of any written claim or suit made or filed against **CITY** or its subcontractors, agents or employees regarding any matter resulting from or relating to **CITY'S** obligations under this Agreement, and will cooperate, assist, and consult with **COUNTY** in the defense or investigation of any written claim, suit or action made or filed against **COUNTY** as a result of or relating to **CITY'S** performance under this Agreement.

14. Hazardous Substances.

(a) The term "*Hazardous Substances*," as used in this Lease, shall mean any regulated, hazardous or toxic substances, products, materials or wastes, including, but not limited to, (i) those substances, products, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR § 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR § 302.4) and amendments thereto, (ii) any substance, product, material or waste designated as a "Hazardous Substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1251, et seq. (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317), or any amendments thereto, (iii) any substance, product, material or waste designated as a "Hazardous Waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), or any amendment thereto (iv) any substance, product, material or waste defined as a "Hazardous Substance" pursuant to Section 101 of the

Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. § 9601, et seq.), or any amendment thereto, (v) any oil or oil product as defined by the Oil Pollution Act of 1990 (33 U.S.C. § 2701, et seq.), or any amendment thereto, (vi) any substance, product, material or waste defined as a "gas," a "liquefied natural gas," or a "hazardous liquid" (including petroleum or a petroleum product) pursuant to the Pipeline Safety Act (49 U.S.C. § 60101, et seq.), and (vii) any substance, material, product or waste (including, without limitation, asbestos, petroleum, petroleum products, and raw materials which include hazardous, toxic or regulated constituents), the release, discharge, removal, remediation, disposal or use of which is restricted, regulated, controlled, proscribed, prohibited or penalized by any "Environmental Law."

(b) The term "Environmental Law," as used in this Lease, shall mean any federal, State or local law, regulation or ordinance relating to health, safety, pollution or protection of the environment, whether existing as of the date hereof, previously enforced, or subsequently enacted. The term "Hazardous Substance" shall include and mean "Regulated Substance."

(c) If any Hazardous Substances are spilled, released or otherwise discovered on the leased premises or any property outside of the leased premises as a result of **CITY'S** Permitted Use as defined in Paragraph 2 herein, then it shall be **CITY'S** responsibility to promptly investigate, remove and/or remediate such Hazardous Substances if such investigation, removal and/or remediation is required by applicable law and the governmental agency having jurisdiction thereof. **CITY** shall have a reasonable time to perform such work, but if **CITY** fails or refuses to

do so, then **COUNTY** shall have the right (but not the duty) to perform such work on the leased premises or the property outside of the leased premises with respect to the Hazardous Substances and to charge the reasonable cost of the same to the **CITY**.

(d) **COUNTY** and **COUNTY'S** agents and representatives shall, subject to compliance with all federal, state and local safety requirements, have the right to enter into or upon the leased premises, or any part thereof, for the purpose of examining same, including but not limited to, the right to test for Hazardous Substances on or under the surface of the property consisting of the leased premises. **CITY** shall have the right to receive split samples of any sampling matter to be tested by **COUNTY** which split samples will be analyzed by **CITY** at **CITY'S** expense.

(e) If **COUNTY** or **CITY** discovers any Hazardous Substances on the leased premises or emanating from operations conducted within the leased premises, it will promptly notify the other party of the details of such discovery and the Hazardous Substances.

(f) **CITY** hereby agrees that (i) no activity will be conducted on the leased premises by **CITY**, its agents, employees, licensee, invitees or any other party entering the leased premises without the consent or knowledge of **CITY** during the term hereof that will produce any Hazardous Substance, except for such activities that are part of the ordinary course of normal business activities provided said activities are conducted in accordance with governing Environmental Laws; (ii) the leased premises will not be used by **CITY**, its agents, employees, licensee, invitees or any other party entering the leased premises without the consent or knowledge of **CITY** during the term hereof in any manner for the storage of any Hazardous Substances except for the temporary storage of such materials that are used in the ordinary course of **CITY'S** business (the "Permitted Materials") provided such Permitted Materials are properly stored in a manner and location in compliance with governing Environmental Laws; (iii) no portion of the leased premises will be used by **CITY**, its agents, employees, licensee, invitees or any other party entering the leased premises without the consent or knowledge of **CITY** during the term hereof as a landfill or dump; (iv) **CITY**, during the term hereof, shall have the express right to install, remove and/or relocate, from time to time, underground pipelines and associated equipment provided such work is performed in accordance with governing Environmental Laws; (v) **CITY** will not during the term hereof allow any surface or subsurface condition to exist or to come into existence that constitutes, or with the passage of time may constitute, a public or private nuisance; (vi) **CITY** will not during the term hereof permit any Hazardous Substances to be brought onto, stored, processed, disposed of on, released, discharged from or otherwise handled on the leased premises (including ground water contamination), except for the activities and Permitted Materials described above, and if so brought or found located thereon, the same shall be immediately removed, with proper disposal in compliance with governing Environmental Laws, and all required cleanup procedures shall be diligently undertaken pursuant to governing Environmental Laws.

(g) Upon the expiration or termination of the term of this Lease **CITY** at its own expense,

hereby agrees to comply with all applicable Environmental Laws including required cleanup procedures, if any, which shall be diligently undertaken, in compliance with the governmental agency having jurisdiction thereof.

(h) Any rights or remedies available to **COUNTY** under this Lease shall be in addition to any rights or remedies available to **COUNTY** under any Environmental Laws

15. Actions of Mayor and Board of Commissioners. No provision herein shall in any way whatsoever be interpreted or construed as restricting or prohibiting the Mayor and/or Board of Shelby County Commissioners from taking any action or passing any resolution or ordinance or their failing to take any action or passing any resolution that they deem to be in the best interests of Shelby County or citizens thereof, or otherwise carrying out their lawful duties.

16. Representations and Warranties. Each party represents to the other with respect to itself that the execution and performance of this Lease Agreement has been duly authorized by all necessary resolutions and corporate or partnership or other such action, and this Lease Agreement constitutes the valid and enforceable obligations of **COUNTY** and **CITY**.

CITY certifies that it shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.

CITY warrants that it has not employed or retained any company or person other than a bona fide employee working solely for **CITY**, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for **CITY** any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, **COUNTY** will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift or other consideration.

17. Subletting and Assignment. **COUNTY** shall have the right to approve in its sole discretion each proposed assignee or sub-City on the basis of experience, reputation and financial strength. No subletting, assignment or transfer shall be effective unless approved in writing by **COUNTY** and shall not relieve **CITY** from performance of its duties under this Agreement.

18. Notices. All notices and approvals required or permitted hereunder shall be written and shall be delivered by a nationally recognized overnight delivery service or by U.S. certified mail, return receipt requested, to the following addresses or such other addresses of which any of the; parties shall give notice from time to time during the term hereof:

If to COUNTY :	Administrator, Contracts Administration/Asst. County Attorney Shelby County Government 160 N. Main Street, Suite 550 Memphis, TN 38103 Phone: (901) 545-4360
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If to **CITY**:
 Director Richard B. Arwood
 City of Memphis Fire Services Division
 65 South Front Street
 Memphis, TN 38113
 Phone: (901) 576-6673

19. Choice of Law. This Lease Agreement will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Lease Agreement, **CITY** agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Lease Agreement will be instituted and litigated in the Courts of the State of Tennessee, or in the United States District Court, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Lease Agreement submit to the jurisdiction of such courts in Shelby County, Tennessee.

20. Act of God. No party shall be liable to any other party or parties for any delay or damage or any failure to act (other than payment of money) as a result of strikes, acts of God or other causes beyond the control of the parties, and delay as a result of the above causes shall not be deemed to be a breach of or failure to perform under this Agreement.

21. Unenforceability. If any provision of this Lease Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a Court finds that any provision of this Lease Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to have been written, construed and enforced as so limited.

22. No Waiver. No waiver of any default of **COUNTY** or **CITY** hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by **COUNTY** or **CITY** shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

23. Approvals. In all instances referenced in this Lease Agreement in which an approval of one party is required, such approval shall be neither unreasonably withheld, delayed nor conditioned.

24. Relationship. Nothing in this Lease Agreement shall be deemed to create a joint venture or partnership between or among any of the parties.

25. Successors. The provisions of this Lease Agreement shall extend to and be binding upon **COUNTY** and **CITY** and their respective legal representatives, successors and assigns.

26. Headings. The headings used in this Lease Agreement are for convenience of the parties

only and shall not be considered in interpreting the meaning of any provision of this Lease.

27. **Memorandum of Lease.** The parties hereto contemplate that this Lease Agreement may be recorded for the purpose of giving public notice of the appropriate provisions of this Lease.

28. **Amendment.** This Lease Agreement may be modified only by amendment made in writing and signed by both parties.

29. **Non-Discrimination.** The **CITY** hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the **CITY** on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The **CITY** shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

30. **Entire Agreement.** This Lease Agreement contains the entire understanding among the parties with respect to the leased premises and there are no other promises or conditions in any other agreements between the parties, whether oral or written, related to the leased premises. This Lease Agreement supersedes any prior written or oral agreements between or among all or any of the parties with respect to the leased premises which continue to govern the rights and obligations of the parties with respect to the leased premises.

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, has executed this Lease Agreement. On behalf of **COUNTY**, affixing thereto of the signature of the Mayor of Shelby County Government, the said Mayor being authorized so to do pursuant to and in accordance in with the approval of the Shelby County Board of Commissioners, on the ____ day of _____, 2009, in Resolution # _____.

CITY OF MEMPHIS

SHELBY COUNTY GOVERNMENT

By: _____
Willie W. Herenton, Mayor

By: _____
A C Wharton, Jr., Mayor

Approved as to Form:

Approved as to Form:

By: _____
Sara L. Hall, City Attorney

By: _____
Contract Administrator/
Assistant County Attorney

Other City Approvals:

Other County Approvals:

BY: _____
Richard B. Arwood, Director
City of Memphis Fire Services Division

By: _____
Ted Fox, Director of Public Works

By: _____
Agnes Martin, City Real Estate Manager

By: _____
Tom Moss, Land Bank Administrator

By: _____
Bill Goss, County Real Estate Manager

**STATE OF TENNESSEE
COUNTY OF SHELBY**

Before me, the undersigned, a Notary Public within and for said State and County, duly commissioned and qualified, personally appeared **A C WHARTON, JR., Mayor of Shelby County, Tennessee**, with whom I am personally acquainted, and who upon oath acknowledged himself to be the **Mayor of Shelby County, Tennessee**, the within named bargainor, one of the counties of the State of Tennessee, and that he as such **Mayor** of said county, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of **Shelby County, Tennessee**, by himself as such **Mayor** of said **Shelby County, Tennessee**.

WITNESS my hand and Notarial Seal, at office in the County of Shelby, in the County aforesaid, this ____ day of _____, 2009.

Notary Public

MY COMMISSION EXPIRES:

**STATE OF TENNESSEE
COUNTY OF SHELBY**

Before me, the undersigned, a Notary Public within and for said State and County, duly commissioned and qualified, personally appeared, **WILLIE W. HERENTON, Mayor of the City of Memphis**, with whom I am personally acquainted, and who upon oath acknowledged himself to be the **Mayor** the within named bargainor, one of the companies of the State of Tennessee, and that he/she as such **Mayor** of said company, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing for **City of Memphis** by himself as such **Mayor** of said company.

WITNESS my hand and Notarial Seal, at office in the **City of Memphis**, in the County aforesaid, this ____ day of _____, 2009.

Notary Public

MY COMMISSION EXPIRES:

EXHIBIT "A"



EXHIBIT "B"

Part of the Countrywood Development Corporation property, being formerly the Alodex Corporation property, in Shelby County, Tennessee, more particularly described as follows:

Beginning at a chisel mark on the rear of the sidewalk on the east line of Rockcreek Parkway (53 feet east of the centerline of Rockcreek Parkway), the southwest corner of the Chevron Oil Company tract, said point being 307 feet south of the centerline of U. S. Highway No. 64, as measured along the east line of said Parkway; thence eastwardly and parallel to the south line of U. S. Highway No. 64 along the south line of the Chevron Oil Company tract a distance of 200.00 feet to an iron pin, the southeast corner of the Chevron tract in the west line of the M. A. Lightman tract; thence southwardly making an interior angle of 88 degrees 40 minutes 24 seconds along the Lightman west line a distance of 200.00 feet to an iron pin; thence westwardly making an interior angle of 91 degrees 19 minutes 36 seconds and parallel to the south line of the Chevron tract a distance of 198.33 feet to a chisel mark on the rear of the sidewalk on the east line of Rockcreek Parkway; thence northwardly with the east line of said Parkway along a curve to the right with a radius of 1753.39 feet a distance of 76.52 feet to a point; thence continuing northwardly along the east line of Rockcreek Parkway a distance of 123.47 feet to the beginning, containing 39,946.69 square feet or 0.917 acres of land.